

CALIFORNIA ENERGY COMMISSION1516 NINTH STREET
SACRAMENTO, CA 95814-5512

**STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION**

Implementation of Restructuring)	Docket No. 98-REN-New
Legislation (Public Utilities Code)	Notice of Business Meeting
Sections 381, 383.5 and 445)	RE: Petitions for Funding Award
[AB 1890, SB 90]): Renewables)	Extensions, New Renewable
)	Resources Account

**NOTICE OF RECOMMENDED COMMITTEE DECISIONS
REGARDING PETITIONS FOR EXTENSION OF FUNDING AWARDS**

The Energy Commission's Business Meeting will be held:

WEDNESDAY, August 14, 2002
10 a.m.
CALIFORNIA ENERGY COMMISSION
1516 Ninth Street
Hearing Room A
Sacramento, California
(Wheelchair Accessible)

As part of its regularly scheduled Business Meeting on August 14, 2002, the Energy Commission will consider the Commission's Environmental and Energy Infrastructure and Licensing Committee's (Committee) proposed recommendations regarding petitions by Wintec Energy Ltd., Keating Associates, and City of Sunnyvale to extend their funding awards under the New Renewable Resources Account, pursuant to Public Utilities Code Section 383.5(c)(2)(B).

The Committee's findings and recommendations are presented in the enclosed three brief reports:

1. Environmental and Energy Infrastructure and Licensing Committee Decision on Petition of Wintec Energy Ltd.
2. Environmental and Energy Infrastructure and Licensing Committee Decision on Petition of Keating Associates
3. Environmental and Energy Infrastructure and Licensing Committee Decision on Petition of City of Sunnyvale.

In summary, the Committee recommends the following:

1. Based on the petition submitted by Wintec Energy Ltd. on May 31, 2002, the Committee finds that the Wintec Energy #2 (Carver Facility) will not be operational by January 1, 2002, due to circumstances beyond Wintec Energy Ltd.'s control.

The Committee recommends that the Commission extend the funding award for the Wintec Energy #2 (Carver Facility) an additional 18 months to July 2, 2003. In addition, the Committee recommends that the award for this project be reduced as specified in the Commission's adopted guidelines and that the project receive no funding award payments for any power generated after July 1, 2008. Lastly, if the project is not on-line by July 2, 2003, or by a reasonable period of time thereafter, then the Commission should reevaluate the project to determine if additional award reduction or award cancellation is justified.

2. Based on the petition submitted by Keating Associates on May 31, 2002, the Committee finds that the Tungstar Small Hydro Project will not be operational by January 1, 2002, due to circumstances beyond Keating Associate's control.

The Committee recommends that the Commission extend the funding award for the Keating Associates Tungstar Small Hydro Project an additional 18 months to July 2, 2003. In addition, the Committee recommends that the award for this project be reduced as specified in the Commission's adopted guidelines and that the project receive no funding award payments for any power generated after July 1, 2008. Lastly, if the project is not on-line by July 2, 2003, or by a reasonable period of time thereafter, then the Commission should reevaluate the status of the project to determine if additional award reduction or award cancellation is justified.

3. Based on the petition submitted by City of Sunnyvale on May 31, 2002, the Committee finds that the City of Sunnyvale Power Generation Facility will not be operational by January 1, 2002, due to circumstances beyond City of Sunnyvale's control.

The Committee recommends that the Commission extend the funding award for the City of Sunnyvale Power Generation Facility an additional 18 months to July 1, 2003. In addition, the Committee recommends that the project receive no funding award payments for any power generated after June 30, 2008. Lastly, if the project is not on-line by July 1, 2003, or by a reasonable period of time thereafter, the Commission should reevaluate the status of the project to determine if additional award reduction or award cancellation is justified.

Written Comments

The Energy Commission encourages members of the public to submit written comments. Twelve copies of any comments filed by mail or in person should be provided to the Commission's Dockets Office. Parties may file electronically but must also submit 12 paper copies to the Dockets Office for docketing and internal distribution.

Comments should be sent to:

**California Energy Commission
Dockets Office
Attn: Docket REN-98-NEW
1516 Ninth St., MS-4
Sacramento, CA 95814-5512
E-Mail: docket@energy.state.ca.us**

All written materials filed with the Dockets Office will become part of the public record in this proceeding. Comments must be submitted no later than the close of business August 12, 2002 to ensure that the full Commission has adequate time to review them before the August 14, 2002 Business Meeting.

Assistance

The Energy Commission's Public Adviser provides assistance to the public regarding Energy Commission procedures and participation in Energy Commission activities. Anyone wishing to obtain information on how to participate in this meeting may reach the Public Adviser's Office by phone at (916) 654-4489, toll free at (800) 822-6228, or by e-mail at [pao@energy.state.ca.us]. If you have a disability and need assistance in order to participate in this hearing, please contact Lou Quiroz at (916) 654-5146. Technical questions regarding the subject matter of this notice may be addressed to Suzanne Korosec at (916) 654-4516 or by e-mail at [skorosec@energy.state.ca.us]. News media should direct inquiries to Assistant Director Claudia Chandler at (916) 654-4989.

Date: July 31, 2002

**STATE OF CALIFORNIA ENERGY
RESOURCES CONSERVATION AND
DEVELOPMENT COMMISSION**

ROBERT PERNELL
Commissioner and Presiding Member
Environmental and Energy Infrastructure and Licensing Committee

Date Mailed: August 2, 2002
Mass Mail List: Master63/New

Environmental and Energy Infrastructure and Licensing Committee Decision on Petition of Wintec Energy, Ltd.

Summary

This decision is issued in response to the petition submitted by Wintec Energy, Ltd. (Wintec) to the California Energy Commission (Commission) pursuant to the Commission's Overall Guidelines for the Renewable Resource Trust Fund. The petition was submitted to the Commission's Environmental and Energy Infrastructure and Licensing Committee (Committee) on May 31, 2002 for an extension of the funding award Wintec received for its Wintec Energy #2 project under the Commission's New Renewable Resources Account Auction, Notice of Auction 500-00-504.

Under Public Utilities Codes section 383.5(c)(2)(B), the Commission may extend a project's funding award if it finds that the delays in a project's on-line date were the result of circumstances beyond the developer's control. Based on Wintec's petition, the Committee finds that the delays of the Wintec Energy #2 project were the result of circumstances beyond Wintec's control and recommends that the project's funding award and required on-line date be extended 18 months to July 2, 2003. In addition, the Committee recommends that project's funding award be reduced as specified in the Commission's adopted guidelines for the New Renewable Resources Account.

The Committee's finding and recommendations are discussed below following an overview of the Commission's Renewable Energy Program and the New Renewable Resources Account and a summary of the Wintec Energy #2 project.

Program Overview

Enacted September 23, 1996, Assembly Bill 1890 (AB 1890) provides \$540 million for the support of renewable electricity generation technologies. These funds are collected from the ratepayers of the state's investor-owned utilities to support existing, new, and emerging renewable electricity generation technologies.

The Renewable Energy Program was established by Senate Bill 90 ([SB 90] enacted October 12, 1997) to distribute these funds. The program consists of four separate accounts, each addressing differing needs within the renewables industry: the Existing Renewable Resources Account, the New Renewable Resources Account, the Emerging Renewable Resources Account, and the Customer-Side Renewable Resource Purchases Account.

The New Renewable Resources Account was originally allocated 30 percent of the AB 1890 funds, or \$162 million, to provide assistance to renewable electricity generating facilities that became operational after September 26, 1996. These funds are intended to foster the development of new in-state renewable electricity generation facilities and

secure for the state the environmental, economic, and reliability benefits that those facilities provide. Funds in the account are awarded through periodic “auctions” in which developers of prospective renewable energy projects compete for funding in the form of production incentives paid out over a maximum of five years.

The Energy Commission held three such auctions to date. Detailed rules for the auctions are contained in the *Guidebook for the Renewable Energy Program, Volumes 2A and 2B – New Renewable Resources Account (Guidebook*, available at [www.energy.ca.gov/renewables]), as well as in the solicitation document for each of the three auctions, Notice of Auction (NOA) 500-97-506, NOA 500-00-504 and NOA 6-01-3.

To participate in the auctions, developers must submit bids for the amount of incentives that the developers require to compete in the broader electricity market, along with a detailed project description, schedule, and estimate of how much renewable generation the project will provide during the first five years of operation.

The second auction (NOA 500-00-504) was held in October 2000. Eligible bids in the auction were ranked from lowest cents per kilowatt-hour incentive request to highest. Beginning with the lowest request, eligible bids were accepted until funds were fully allocated. Auction winners were notified in writing on December 8, 2001 that their projects were eligible for funding.

The second auction was designed specifically to encourage projects to be on-line by the summer of 2001 to help meet the state’s anticipated summer peak. Toward that end, winning bidders were subject to bonuses and penalties based on their on-line dates, as shown below:

Project On-line Date	Percentage of Award
Prior to or on June 1, 2001	110 Percent
June 2 to July 1, 2001	100 Percent
July 2 to August 1, 2001	90 Percent
August 2 to December 31, 2001	80 Percent
January 1, 2002 and beyond	Award may be terminated or further reduced

According to the *Guidebook* and the NOA 500-00-504, winning projects from the second auction must come on-line (begin generating electricity) by December 31, 2001 or sooner to receive five full years of funding from the Commission. This on-line date requirement is based on the version of Public Utilities Code section 383.5(c)(2)(B) existing at the time the Notice of Auction 500-00-504 was developed.

In September of 2000, Governor Davis signed Assembly Bill 995 into law, which amended section 383.5(c)(2)(B) so that projects participating in the New Renewable Resources Account could come on-line later than December 31, 2001 and still receive five full years of funding, provided that the Commission makes a formal finding that the delay in on-line date resulted from circumstances beyond a project developer’s control.

At its regularly scheduled April 3, 2002 Business Meeting, the Commission adopted revisions to the program guidelines to incorporate a petition process for winning project developers to follow in applying to the Commission for a funding award extension under this amendment. These revised guidelines are set forth in Chapter 7 of the Commission's *Overall Guidelines for the Renewable Resource Trust Fund*.

In summary, petitions must be sent to the Committee and specify the reasons for the project's delayed on-line date, explain why the petitioner believes the delay resulted from circumstances beyond the petitioner's control, identify the reasonable efforts taken by the petitioner to bring the project on-line by the date specified in the applicable auction solicitation, identify the additional time needed to bring the project on-line and why this time is needed, and include a revised project schedule identifying new completion dates for any milestones not passed as of the date of the petition. Within 30 days of receipt of a complete petition the Committee, in its discretion, will either issue a decision based on its consideration of the petition or schedule a hearing to consider the petition. The Committee's decision will contain recommendations regarding the appropriateness of a funding award extension, the length of extension, and any reductions or penalties to be imposed. The Committee's decision and recommendations will become final when formally approved by the Commission at a regularly scheduled Business Meeting.

In addition to the petition process, the revised guidelines established mandatory penalties for winning projects from the second and third auction that were delayed beyond January 1, 2002, as shown below.

Project On-line Date	Percentage of Award
January 1 to September 1, 2002	80 Percent
Sept. 2 to December 31, 2002	70 Percent
January 1, 2003 to April 1, 2003	60 Percent
April 2, 2003 to July 1, 2003	50 Percent
July 2, 2003 and beyond	Award may be further reduced or terminated.

Wintec Energy, Ltd. Project

Wintec was a winning bidder in the second auction (NOA 500-00-504), held in October 2000, and was conditionally awarded \$808,376.80 based on an incentive bid of 1.12 cents/kWh. The Wintec Energy #2 (Carver Facility) project will be located in Riverside County and consist of five 750 kW wind turbines with a total installed capacity of 3.75 MW.

No funding award agreement has been signed with Wintec for this project as yet, since the Commission does not sign funding award agreements with winners of the second auction until the projects have provided proof of having met their California Environmental Quality Act (CEQA) requirements.

At the time of the second auction, Wintec submitted a project schedule to the Commission showing that the project would be on-line before January 1, 2002, identifying an on-line date of May 31, 2001. However, the project has experienced a series of delays in project development and currently reports a revised on-line date of December 31, 2002.

Wintec Petition

Wintec submitted a formal petition to the Commission on May 31, 2002, asking to have the award for the Wintec Energy #2 (Carver Facility) extended pursuant to the amendment of Public Utilities Code section 383.5(c)(2)(B). The petition requests the Commission to determine that the project was not operational by January 1, 2002 due to “circumstances beyond the control of the developer” and seeks a 12-month extension to the on-line date for the Wintec Energy #2 (Carver Facility) to December 31, 2002. Although Wintec expects to have the project on-line by fall of 2002, it is seeking an extension to December 31, 2002 to allow for any unexpected construction delays.

After reviewing the petition and deeming it complete, the Committee determined that a hearing to address the petition was unnecessary and that it would exercise its discretion to issue a decision based on the petition alone.

Discussion

The discussion that follows will first address the requisite findings under California Public Utilities Code section 383.5(c)(2)(B), then the length of any funding award extensions, and lastly any appropriate reduction or penalty of the project’s awards.

Findings Under Public Utilities Code Section 383.5(c)(2)(B)

Under California law, a project awarded funding from the Commission’s New Renewable Resources Account remains eligible to receive five years of funding even if the project is not operational by January 1, 2002, if the Commission finds the delayed operation was due to circumstances beyond the project developer’s control. This law is set forth in Public Utilities Code section 383.5 (c)(2)(B), which provides as follows:

Funds expended for production incentives shall be paid over a five-year period commencing on the date that a project begins electricity production, provided that the project shall be operational prior to January 1, 2002, *unless the State Energy Resources Conservation and Development Commission finds that the project will not be operational prior to January 1, 2002, due to circumstances beyond the control of the developer.* Upon making this finding, the State Energy Resources Conservation and Development Commission shall pay production incentives over a five-year period, commencing on the date of operation, provided that the date that a project begins electricity production may not extend beyond January 1, 2007. [Emphasis added.]

To make the requisite finding, the Commission must determine if there were circumstances beyond Wintec's control that prevented the Wintec Energy #2 (Carver Facility) from coming on-line by January 1, 2002.

In its petition, Wintec points to several factors which it claims were beyond its control that delayed the Wintec Energy #2 (Carver Facility) anticipated on-line date of May 31, 2001. These factors were (1) the lack of available power purchase contracts for wind energy projects starting in 2000 and continuing to the present, and (2) the inability to secure the necessary project financing to purchase wind turbines and begin construction as a result of the lack of a power purchase contract.

Wintec states that it has actively pursued various avenues toward securing a power purchase agreement, including negotiations with:

- (a) a California bank, which were placed on hold when the California utilities began experiencing financial difficulties and when the California Power Exchange became defunct
- (b) a financial group to sell power into the Cal-ISO's imbalance market until a long-term contract could be secured, which were discontinued when FERC imposed a cap on electricity prices and reduced the projections and returns to the investors
- (c) an independent investor who signed a letter of intent but who terminated discussions because of the FERC-imposed cap on electricity, reduced market prices in late summer 2001, stalled discussions at the Cal-ISO on tariff amendments for intermittent resources, and the uncertain utility climate
- (d) the California Department of Water Resources (CDWR), who required generators to assume the risk of the Cal-ISO imbalance penalties which made the price of the Wintec project's energy higher than agreeable to CDWR
- (e) a municipal utility, with those discussions currently moving forward and ideally leading to construction of the project in late summer 2002

Wintec has ownership of the land, has obtained all the necessary land use permits, and has an interconnection agreement including completed point of interconnection with the utility transmission system.

Finding Regarding the Wintec Energy #2 (Carver Facility)

Based on the petition, the Committee finds that the Wintec Energy #2 (Carver Facility) was not operational by January 1, 2002, because of circumstances beyond Wintec's control. Wintec's petition points out the delays resulting from the lack of power purchasers in California's electricity market and inability to secure financing as a result, neither of which were circumstances within Wintec's control.

Wintec's petition demonstrates that the developer has diligently sought to secure a long-term power purchase agreement, necessary to obtain project financing, but has been unable to do so due to the uncertainty in California's electricity market over the past two years and the unavailability of long-term power contracts in the market.

Length of Award Extension

Based on the findings outlined above, the Committee recommends that the on-line date for purposes of the funding award for the Wintec Energy #2 (Carver Facility) be extended 18 months to July 2, 2003. Although Wintec expects to have this project on-line by the fall of 2002, and is seeking only a 12-month extension to December 31, 2003, the Committee believes it is reasonable to extend the on-line date to July 2, 2003, given the uncertainty of California's electricity market and the inability of new projects to secure long-term power purchase agreements.

While Public Utilities Code section 383.5(c)(2)(B) allows for longer extensions, stating that "the date that a project begins electricity production may not extend beyond January 1, 2007," the Committee believes that extending the on-line date for the Wintec project beyond July 2, 2003 would unduly tie up program funds and be contrary to the public policy goals of the program. NOA 500-00-504 was specifically held to solicit new renewable projects that could come on-line by the summer of 2001 and assist with the State's expected energy crunch. Wintec and the other participants of NOA 500-00-504 were well aware of this and should not be discouraged from coming on-line as quickly as possible.

The Committee's recommended award extension is consistent with the *Guidebook*, which states, in reference to winners in the second auction whose awards are extended, that no funding award payments will be made to projects for any generation beyond July 1, 2008. Under this limitation, Wintec's project must be on-line by July 2, 2003 in order to receive five full years of funding, as is requested in the Wintec petition.

Reduction of Funding Awards

In accordance with the *Guidebook*, the Committee recommends that the award for the Wintec Energy #2 (Carver Facility) be reduced as follows based on the project's on-line date.

Project On-line Date	Percentage of Award
January 1 to September 1, 2002	80 Percent
Sept. 2 to December 31, 2002	70 Percent
January 1, 2003 to April 1, 2003	60 Percent
April 2, 2003 to July 1, 2003	50 Percent
July 2, 2003 and beyond	Award may be further reduced or terminated.

While the *Guidebook* and NOA 500-00-504 contain provisions for additional reductions, the Committee does not believe additional reductions are justified at this time if the project is on-line by July 2, 2003. However, if the project is not on-line by July 2, 2003, or by a reasonable period of time thereafter, the Committee recommends that the Commission re-evaluate the status of the project to determine if an additional award reduction or award cancellation is justified.

Environmental and Energy Infrastructure and Licensing Committee Decision on Petition of Keating Associates

Summary

This decision is issued in response to the petition submitted by Keating Associates (Keating) to the California Energy Commission pursuant to the Commission's Overall Guidelines for the Renewable Resource Trust Fund. The petition was submitted to the Commission's Environmental and Energy Infrastructure and Licensing Committee on May 31, 2002, and seeks an extension of the funding award Keating received for its Tungstar Small Hydro Project under the Commission's New Renewable Resources Account Auction, Notice of Auction 500-00-504.

Under Public Utilities Codes section 383.5(c)(2)(B), the Commission may extend a project's funding award if it finds that the delays in a project's on-line date were the result of circumstances beyond the developer's control. Based on Keating's petition the Committee finds that the delays of the Tungstar Small Hydro Project were the result of circumstances beyond Keating's control and recommends that the project's funding award and required on-line date be extended 18 months to July 2, 2003. In addition, the Committee recommends that project's funding award be reduced as specified in the Commission's adopted guidelines for the New Renewable Resources Account.

The Committee's finding and recommendations are discussed below following an overview of the Commission's Renewable Energy Program and the New Renewable Resources Account and a summary of the Tungstar Small Hydro Project.

Program Overview

Enacted September 23, 1996, Assembly Bill 1890 (AB 1890) provides \$540 million for the support of renewable electricity generation technologies. These funds are collected from the ratepayers of the state's investor-owned utilities to support existing, new, and emerging renewable electricity generation technologies.

The Renewable Energy Program was established by Senate Bill 90 ([SB 90] enacted October 12, 1997) to distribute these funds. The program consists of four separate accounts, each addressing differing needs within the renewables industry: the Existing Renewable Resources Account, the New Renewable Resources Account, the Emerging Renewable Resources Account, and the Customer-Side Renewable Resource Purchases Account.

The New Renewable Resources Account was originally allocated 30 percent of the AB 1890 funds, or \$162 million, to provide assistance to renewable electricity generating facilities that became operational after September 26, 1996. These funds are intended to foster the development of new in-state renewable electricity generation facilities and

secure for the state the environmental, economic, and reliability benefits that those facilities provide. Funds in the account are awarded through periodic “auctions” in which developers of prospective renewable energy projects compete for funding in the form of production incentives paid out over a maximum of five years.

The Energy Commission held three such auctions to date. Detailed rules for the auctions are contained in the *Guidebook for the Renewable Energy Program, Volumes 2A and 2B – New Renewable Resources Account (Guidebook*, available at [www.energy.ca.gov/renewables]), as well as in the solicitation document for each of the three auctions, Notice of Auction (NOA) 500-97-506, NOA 500-00-504 and NOA 6-01-3.

To participate in the auctions, developers must submit bids for the amount of incentives that the developers require to compete in the broader electricity market, along with a detailed project description, schedule, and estimate of how much renewable generation the project will provide during the first five years of operation.

The second auction (NOA 500-00-504) was held in October 2000. Eligible bids in the auction were ranked from lowest cents per kilowatt-hour incentive request to highest. Beginning with the lowest request, eligible bids were accepted until funds were fully allocated. Auction winners were notified in writing on December 8, 2001 that their projects were eligible for funding.

The second auction was designed specifically to encourage projects to be on-line by the summer of 2001 to help meet the state’s anticipated summer peak. Toward that end, winning bidders were subject to bonuses and penalties based on their on-line dates, as shown below:

Project On-line Date	Percentage of Award
Prior to or on June 1, 2001	110 Percent
June 2 to July 1, 2001	100 Percent
July 2 to August 1, 2001	90 Percent
August 2 to December 31, 2001	80 Percent
January 1, 2002 and beyond	Award may be terminated or further reduced

According to the *Guidebook*, and the NOA 500-00-504, winning projects from the second auction must come on-line (begin generating electricity) by December 31, 2001 or sooner to receive five full years of funding from the Commission. This on-line date requirement is based on the version of Public Utilities Code section 383.5(c)(2)(B) existing at the time the Notice of Auction 500-00-504 was developed.

In September of 2000, Governor Davis signed Assembly Bill 995 into law, which amended section 383.5(c)(2)(B) so that projects participating in the New Renewable Resources Account could come on-line later than December 31, 2001 and still receive five full years of funding, provided that the Commission makes a formal finding that the delay in on-line date resulted from circumstances beyond a project developer’s control.

At its regularly scheduled April 3, 2002 Business Meeting, the Commission adopted revisions to the program guidelines to incorporate a petition process for winning project developers to follow in applying to the Commission for a funding award extension under this amendment. These revised guidelines are set forth in Chapter 7 of the Commission's *Overall Guidelines for the Renewable Resource Trust Fund*.

In summary, petitions must be sent to the Committee and specify the reasons for the project's delayed on-line date, explain why the petitioner believes the delay resulted from circumstances beyond the petitioner's control, identify the reasonable efforts taken by the petitioner to bring the project on-line by the date specified in the applicable auction solicitation, identify the additional time needed to bring the project on-line and why this time is needed, and include a revised project schedule identifying new completion dates for any milestones not passed as of the date of the petition. Within 30 days of receipt of receiving a complete petition, the Committee, in its discretion, will either issue a decision based on its consideration of the petition or schedule a hearing to consider the petition. The Committee's decision has to contain recommendations regarding the appropriateness of a funding award extension, the length of extension, and any reductions or penalties to be imposed. The Committee's decision and recommendations will become final when formally approved by the Commission at a regularly scheduled Business Meeting.

In addition to the petition process, the revised guidelines established mandatory penalties for winning projects from the second and third auction that were delayed beyond January 1, 2002, as shown below.

Project On-line Date	Percentage of Award
January 1 to September 1, 2002	80 Percent
Sept. 2 to December 31, 2002	70 Percent
January 1, 2003 to April 1, 2003	60 Percent
April 2, 2003 to July 1, 2003	50 Percent
July 2, 2003 and beyond	Award may be further reduced or terminated.

Keating Associates Tungstar Small Hydro Project

Keating Associates (Keating) was a winning bidder in the second auction (NOA 500-00-504), held in October 2000, and was conditionally awarded \$80,418.26 based on an incentive bid of 1.35 cents/kWh. The Keating Associates Tungstar Small Hydro Project is a 990 kilowatt project that will be located in Inyo County, southwest of Rovanna.

No funding award agreement has been signed with Keating for this project as yet, since the Commission does not sign funding award agreements with winners of the second auction until the projects have provided proof of having met their California Environmental Quality Act (CEQA) requirements.

At the time of the second auction, Keating submitted a project schedule to the Commission showing that the project would be on-line before January 1, 2002,

identifying an on-line date of October 30, 2001. However, the project has experienced a series of delays in project development and currently reports a revised on-line date of June 15, 2003.

Keating Petition

Keating submitted a formal petition to the Commission on May 31, 2002 asking to have the award for the Tungstar Small Hydro Project extended pursuant to the amendment of Public Utilities Code section 383.5(c)(2)(B). The petition requests the Commission to make a determination that the project was not operational by January 1, 2002 due to “circumstances beyond the control of the developer,” and seeks an 18-month extension to the on-line date for the Tungstar Small Hydro Project to June 15, 2003.

After reviewing the petition and deeming it complete, the Committee determined that a hearing to address the petition was unnecessary and that it would exercise its discretion to issue a decision based on the petition alone.

Discussion

The discussion that follows will first address the requisite findings under California Public Utilities Code section 383.5(c)(2)(B), then the length of any funding award extensions, and lastly any appropriate reduction or penalty of the Keating Tungstar Small Hydro Project’s award.

Findings Under Public Utilities Code Section 383.5(c)(2)(B)

Under California law, a project awarded funding from the Commission’s New Renewable Resources Account remains eligible to receive five years of funding even if the project is not operational by January 1, 2002, if the Commission finds the delayed operation was due to circumstances beyond the project developer’s control. This law is set forth in Public Utilities Code section 383.5 (c)(2)(B), which provides as follows:

Funds expended for production incentives shall be paid over a five-year period commencing on the date that a project begins electricity production, provided that the project shall be operational prior to January 1, 2002, *unless the State Energy Resources Conservation and Development Commission finds that the project will not be operational prior to January 1, 2002, due to circumstances beyond the control of the developer.* Upon making this finding, the State Energy Resources Conservation and Development Commission shall pay production incentives over a five-year period, commencing on the date of operation, provided that the date that a project begins electricity production may not extend beyond January 1, 2007. [Emphasis added.]

To make the requisite finding, the Commission must determine if there were circumstances beyond Keating's control that prevented the project from coming on-line by January 1, 2002.

In the petition, Keating points to two factors which it claims were beyond its control that delayed the project's anticipated on-line date of October 30, 2001. These factors were: (1) the inability to secure a power purchase contract, leading to inability to finalize project financing and begin construction, and (2) delays in permitting attributable to the permitting agencies.

Keating states that it has been unable to obtain a power purchase contract for the sale of the project's power, which is necessary to finalize project financing for construction. Keating submitted a proposal to Los Angeles Department of Water and Power in February 2001 for their Green Energy Program, but the proposal was not accepted. Keating then submitted a proposal to the California Department of Water Resources in March 2001, but was informed that the threshold limit on projects at that time was 10 MW. When the California Consumer Power and Conservation Financing Authority was formed in August 2001, Keating contacted that agency but was told that they did not have any provisions for dealing with hydroelectric projects.

Keating notes that it has made additional contacts with other public agencies that could directly purchase power from private parties, but has been unsuccessful. Keating has also investigated selling through a direct access contract, but due to the California Public Utility Commission (CPUC) decision in September 2001 discontinuing direct access, that option was not feasible.

Keating requested a power purchase contract from Southern California Edison (SCE) under the PURPA requirement that utilities must purchase energy from qualifying facilities at the utility's avoided cost. The SCE informed Keating that in their opinion, SCE no longer had to comply with PURPA because the CPUC had relieved them of this responsibility.

Keating indicates that because of the high capital cost of hydroelectric project, the ability to build such a project is tied completely to a strong power purchase agreement that can demonstrate a dependable method of retiring the project's debt.

Regarding permitting issues, Keating states that the United States National Forest (USFS) has informed Keating that it will not expend time and effort completing the FERC-mandated review of the FERC license articles until the state of California has completed processing of the appropriate water rights application. The processing of the water rights application is taking much longer than anticipated by the State Water Resources Control Board. Ordinarily, the question of water rights is not required by FERC for the start of construction, but in this case, one of the FERC license articles makes it mandatory to comply with the USFS requirements.

Finding Regarding the Tungstar Small Hydro Project

Based on the petition, the Committee finds that the Tungstar Small Hydro Project was not operational by January 1, 2002, because of circumstances beyond Keating's control. Delays arising from permitting issues and the uncertainty in California's electricity market were both circumstances beyond Keating's control.

Keating's petition demonstrates that the developer has diligently sought to secure a long-term power purchase agreement, necessary to obtain project financing, and has been unable to do so due to the overall uncertainty in California's electricity market over the past two years and the unavailability of long-term power contracts in the market.

Keating's petition also demonstrates that the developer has made efforts to speed up the permitting process by working with the State Water Resources Control Board and the USFS to try and coordinate the SWRCB's review of the water rights application and the USFS's review of the FERC license articles.

Length of Award Extension

Based on the findings outlined above, the Committee recommends extending the on-line date of the funding award for the Tungstar Small Hydro Project by 18 months to July 2, 2003. Although Keating expects to have the project on-line by June 15, 2003, the Committee believes that it is reasonable to extend the on-line date to July 2, 2003, given the uncertainty of California's electricity market and the ability of new projects to secure long-term power purchase agreements.

While Public Utilities Code section 383.5(c)(2)(B) allows for longer extensions, stating that "the date that a project begins electricity production may not extend beyond January 1, 2007," the Committee believes that extending the proposed on-line date for the Tungstar Small Hydro Project beyond July 2, 2003 would unduly tie up program funds and be contrary to the public policy goals of the program. The NOA 500-00-504 was specifically held to solicit new renewable projects that could come on-line by the summer of 2001 and assist with the state's expected energy crunch. Keating and the other participants of the NOA 500-00-504 were well aware of this and should not be discouraged from coming on-line as quickly as possible.

The Committee's recommended award extension is consistent with the *Guidebook*, which states, in reference to winners in the second auction whose awards are extended, that no funding award payments will be made to projects for any generation beyond July 1, 2008. Under this limitation, Keating's project must be on-line by July 2, 2003 to receive five full years of funding, as is requested in the Keating petition.

Reduction of Funding Awards

In accordance with the *Guidebook*, the Committee recommends that the award for the Keating Tungstar Small Hydro Project be reduced as follows based on the project's on-line date.

Project On-line Date	Percentage of Award
January 1 to September 1, 2002	80 Percent
Sept. 2 to December 31, 2002	70 Percent
January 1, 2003 to April 1, 2003	60 Percent
April 2, 2003 to July 1, 2003	50 Percent
July 2, 2003 and beyond	Award may be further reduced or terminated.

While the *Guidebook* and NOA 500-00-504 contain provisions for additional reductions, the Committee does not believe that additional reductions are justified at this time if the project is on-line by July 2, 2003. However, if the project is not on-line by July 2, 2003, or by a reasonable period of time thereafter, the Committee recommends that the Commission re-evaluate the status of the project to determine if an additional award reduction or award cancellation is justified.

Environmental and Energy Infrastructure and Licensing Committee Decision on Petition of City of Sunnyvale

Summary

This decision is issued in response to the petition submitted by City of Sunnyvale (Sunnyvale) to the California Energy Commission (Commission) pursuant to the Commission's Overall Guidelines for the Renewable Resource Trust Fund. The petition was submitted to the Commission's Environmental and Energy Infrastructure and Licensing Committee (Committee) on May 31, 2002, for an extension of the funding award Sunnyvale received for its City of Sunnyvale Power Generation Facility under the Commission's New Renewable Resources Account Auction, Notice of Auction 500-97-506.

Under Public Utilities Codes section 383.5(c)(2)(B) the Commission may extend a project's funding award if it finds that the delays in a project's on-line date were the result of circumstances beyond the developer's control. Based on Sunnyvale's petition the Committee finds that the delays of the City of Sunnyvale Power Generation Facility were the result of circumstances beyond Sunnyvale's control and recommends that the project's funding award and required on-line date be extended 18 months to July 1, 2003.

The Committee's finding and recommendations are discussed below following an overview of the Commission's Renewable Energy Program and the New Renewable Resources Account and a summary of the City of Sunnyvale Power Generation Facility.

Program Overview

Enacted September 23, 1996, Assembly Bill 1890 (AB 1890) provides \$540 million for the support of renewable electricity generation technologies. These funds are collected from the ratepayers of the state's investor-owned utilities to support existing, new, and emerging renewable electricity generation technologies.

The Renewable Energy Program was established by Senate Bill 90 ([SB 90] enacted October 12, 1997) to distribute these funds. The program consists of four separate accounts, each addressing differing needs within the renewables industry: the Existing Renewable Resources Account, the New Renewable Resources Account, the Emerging Renewable Resources Account, and the Customer-Side Renewable Resource Purchases Account.

The New Renewable Resources Account was originally allocated 30 percent of the AB 1890 funds, or \$162 million, to provide assistance to renewable electricity generating facilities that became operational after September 26, 1996. These funds are intended to foster the development of new in-state renewable electricity generation facilities and

secure for the state the environmental, economic, and reliability benefits that those facilities provide. Funds in the account are awarded through periodic “auctions” in which developers of prospective renewable energy projects compete for funding in the form of production incentives paid out over a maximum of five years.

The Energy Commission has held three such auctions to date. Detailed rules for the auctions are contained in the *Guidebook for the Renewable Energy Program, Volumes 2A and 2B – New Renewable Resources Account (Guidebook*, available at [www.energy.ca.gov/renewables]), as well as in the solicitation document for each of the three auctions, Notice of Auction (NOA) 500-97-506, NOA 500-00-504 and NOA 6-01-3.

To participate in the auctions, developers must submit bids for the amount of incentives that the developers require to compete in the broader electricity market, along with a detailed project description, schedule, and estimate of how much renewable generation the project will provide during the first five years of operation.

The first auction was held in June 1998. Eligible bids in the auction were ranked from lowest cents per kilowatt-hour incentive request to highest. Beginning with the lowest request, eligible bids were accepted until funds were fully allocated. Auction winners were notified in writing on July 10, 1998 that their projects were accepted as eligible for funding.

According to the *Guidebook for the Renewable Energy Program - Volume 2, New Renewable Resources Account* and the NOA 500-97-506, winning projects from the first auction must come on-line (begin generating electricity) by December 31, 2001 or sooner to receive five full years of funding from the Commission. This on-line date requirement is based on the version of Public Utilities Code section 383.5(c)(2)(B) existing at the time the Notice of Auction 500-97-506 was developed.

In September of 2000, Governor Davis signed Assembly Bill 995 into law, which amended section 383.5(c)(2)(B) so that projects participating in the New Renewable Resources Account could come on-line later than December 31, 2002 and still receive five full years of funding, provided that the Commission makes a formal finding that the delay in on-line date resulted from circumstances beyond a project developer’s control.

At its regularly scheduled April 3, 2002 Business Meeting, the Commission adopted revisions to the program guidelines to incorporate a petition process for winning project developers to follow in applying to the Commission for a funding award extension under this amendment. These revised guidelines are set forth in Chapter 7 of the Commission’s *Overall Guidelines for the Renewable Resource Trust Fund*.

In summary, petitions must be sent to the Committee and specify the reasons for the project’s delayed on-line date, explain why the petitioner believes the delay resulted from circumstances beyond the petitioner’s control, identify the reasonable efforts taken by the petitioner to bring the project on-line by the date specified in the applicable auction solicitation, identify the additional time needed to bring the project on-line and

why this time is needed, and include a revised project schedule identifying new completion dates for any milestones not passed as of the date of the petition. Within 30 days of receiving a complete petition the Committee, in its discretion, will either issue a decision based on its consideration of the petition or schedule a hearing to consider the petition. The Committee's decision has to contain recommendations regarding the appropriateness of a funding award extension, the length of extension, and any reductions or penalties to be imposed. The Committee's decision and recommendations will become final when formally approved by the Commission at a regularly scheduled Business Meeting.

City of Sunnyvale

Sunnyvale was a winning bidder in the June 1998 auction (NOA 500-97-506). Sunnyvale was conditionally awarded \$210,448 (funding award agreement REN-98-049, approved by the Commission in June 1999) for its 1.6 MW City of Sunnyvale Power Generation Facility. This award was based on Sunnyvale's incentive bid of 1.12 cents per kilowatt hour.

At the time of the June 1998 auction, Sunnyvale submitted a project schedule to the Commission showing that the project would be on-line before January 1, 2002, identifying an on-line date of January 4, 1999. However, the project has experienced a series of delays in project development and currently reports a revised on-line date of July 1, 2003.

Sunnyvale Petition

Sunnyvale submitted a formal petition to the Commission on May 31, 2002 asking to have the award for the City of Sunnyvale Power Generation Facility extended pursuant to the amendment of Public Utilities Code section 383.5(c)(2)(B). The petition requests the Commission to determine that the project was not operational by January 1, 2002 due to "circumstances beyond the control of the developer" and seeks a 18-month extension to the on-line date for the City of Sunnyvale Power Generation Facility to July 1, 2003.

After reviewing the petition and deeming it complete, the Committee determined that a hearing to address the petition was unnecessary and that it would exercise its discretion to issue a decision based on the petition alone.

Discussion

The discussion that follows first addresses the requisite findings under California Public Utilities Code section 383.5(c)(2)(B), then the length of any funding award extensions, and lastly any appropriate reduction or penalty of the Sunnyvale project's award.

Findings Under Public Utilities Code Section 383.5(c)(2)(B)

Under California law, a project awarded funding from the Commission's New Renewable Resources Account remains eligible to receive five years of funding even if the project is not operational by January 1, 2002, if the Commission finds the delayed operation was due to circumstances beyond the project developer's control. This law is set forth in Public Utilities Code section 383.5 (c)(2)(B), which provides as follows:

Funds expended for production incentives shall be paid over a five-year period commencing on the date that a project begins electricity production, provided that the project shall be operational prior to January 1, 2002, unless the State Energy Resources Conservation and Development Commission finds that the project will not be operational prior to January 1, 2002, due to circumstances beyond the control of the developer. Upon making this finding, the State Energy Resources Conservation and Development Commission shall pay production incentives over a five-year period, commencing on the date of operation, provided that the date that a project begins electricity production may not extend beyond January 1, 2007. [Emphasis added.]

To make the requisite finding, the Commission must determine if there were circumstances beyond Sunnyvale's control that prevented the project from coming on-line by January 1, 2002.

In its petition, Sunnyvale points to several factors which it claims were beyond its control that delayed the project's anticipated on-line date of July 1, 1999. These factors include:

- (1) delays in the installation of interconnection equipment by Pacific Gas and Electric Company (PG&E)
- (2) unexpected decline in the production of landfill gas from the Sunnyvale Landfill, the project's fuel source
- (3) lower-than-expected energy content in the digester gas used to supplement the project's fuel source
- (4) the need to automate the natural gas backup system because of the current need for continual manual staffing that is not feasible.

Sunnyvale entered into discussions with PG&E in 1996 and requested a utility interconnection study in 1998. At that time, Sunnyvale expected the study to be complete by December 15, 1998. However, PG&E did not provide an estimate of the project cost until January 1999. Sunnyvale paid a \$10,000 deposit to PG&E in March 1999. The two parties did not agree to the final distribution agreement until August 2000. An additional six months elapsed before PG&E notified Sunnyvale that it had completed construction and that the interconnect equipment could be used.

At the time the bid was placed, Sunnyvale believed that the landfill gas from the Sunnyvale Landfill would be sufficient to generate at the bid capacity of 1.6 MW. However, since the Sunnyvale Landfill is closed, the delays introduced by PG&E exacerbated the shortfall of landfill gas, particularly since Sunnyvale was unable to accurately assess the gas supply issue until it had confirmed its ability to export in February 2001.

To address the shortfall of landfill gas, Sunnyvale asked for and received Commission approval of a “change in technology” to allow the addition of digester gas as a fuel source. Sunnyvale proceeded to spend a significant amount of money, \$186,500, on a public works project to redirect excess digester gas from the Sunnyvale Water Pollution Control Plant to the facility. However, the addition of the digester gas did not add enough energy content to allow the project to satisfy its load and also allow power exports.

Sunnyvale then designed a system to use existing natural gas that is piped to the Sunnyvale Water Pollution Control Plant as a backup fuel to supplement the City of Sunnyvale Power Generation Facility enough to run it at full capacity, 1.6 MW. Currently, this facility requires continual manual staffing, which is not feasible. Sunnyvale is working to automate these controls at a preliminary cost estimate of \$200,000-\$250,000, and expect to have this completed sometime between January 1, 2003 and July 1, 2003.

Finding Regarding the City of Sunnyvale Power Generation Facility

Based on the petition, the Committee finds that the City of Sunnyvale Power Generation Facility was not operational by January 1, 2002, because of circumstances beyond Sunnyvale’s control. Delays arising from PG&E’s interconnection process, the decline of gas supply from the landfill, the energy content of the digester gas used to supplement the landfill gas, and the need for an automated process to use the backup natural gas to bring the project up to full capacity were all circumstances beyond Sunnyvale’s control.

Sunnyvale’s petition demonstrates that the developer has made every effort to resolve these issues. Sunnyvale worked with PG&E to obtain interconnection starting in 1998, and requested a distribution agreement in March 1999 after paying a deposit to PG&E. The distribution agreement was not signed by PG&E until August 2000, and the construction on the interconnection equipment was not completed until February 2001.

When it became apparent that the gas production from the landfill would not be sufficient to power the project, the City of Sunnyvale moved quickly to resolve the situation by requesting a change in technology from the Commission and investing nearly \$200,000 in a project to redirect digester gas from the Sunnyvale Water Pollution Control Plant to the Power Generating Facility.

When adding the digester gas still did not bring the project up to full bid capacity, Sunnyvale began work on introducing natural gas into the system to make up the shortfall, while ensuring that the level of natural gas did not exceed the 25 percent limitation contained in the New Renewable Resources Account guidelines.

Length of Award Extension

Based on the findings outlined above, the Committee recommends that the on-line date for purposes of the funding award for the City of Sunnyvale Power Generation Facility be extended 18 months to July 1, 2003, but that the project not receive incentive payments for any generation after June 30, 2008.

While Public Utilities Code section 383.5(c)(2)(B) allows for longer extensions, stating that “the date that a project begins electricity production may not extend beyond January 1, 2007,” the Committee believes that extending the proposed on-line date for the City of Sunnyvale Power Generation Facility beyond July 1, 2003 would unduly tie up program funds and be contrary to the public policy goals of the program.

Reduction of Funding Awards

While the Guidebook, NOA 500-97-506, and Funding Award Agreement REN-98-046 all contain provisions for reducing funding awards for auction winners for nonperformance or other reasonable cause, the Committee does not believe an award reduction for the City of Sunnyvale Power Generation Facility is justified at this time if the project is on-line by July 1, 2003.

Sunnyvale has worked diligently to get its project permitted, despite numerous delays and has made many modifications to the City of Sunnyvale Power Generation Facility in an attempt to bring the project on-line. Given the circumstances, the Committee recommends that the Sunnyvale Project not have its funding award reduced. The developer appears to have worked diligently and in good faith to get the project on-line. In addition, the Committee believes that the conditions of the award extension will encourage the developer to construct the project in an expeditious manner.

However, if the project is not on-line by July 1, 2003, or by a reasonable period of time thereafter, the Committee recommends that the Commission reevaluate the status of the project to determine if an award reduction or cancellation is justified.